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17 *Attorneys for Plaintiff*
   ORACLE AMERICA, INC.
18

19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC.   Case No. CV 10-03561 WHA

23   Plaintiff,   **DECLARATION OF MARC PETERS IN
                                           SUPPORT OF ORACLE AMERICA'S
24   v.   MOTION FOR ADMINISTRATIVE
                                           RELIEF REGARDING STATEMENT TO
25 GOOGLE INC.   JURY**

26   Defendant.   Dept.: Courtroom 8, 19th Floor
                                           Judge: Honorable William H. Alsup
27

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   PETERS DECL. ISO ORACLE MOTION RE STATEMENT TO JURY
   CASE NO. CV 10-03561 WHA
   sf-3132202

1   I, Marc David Peters, declare as follows:

2   I am an attorney at Morrison & Foerster LLP and am counsel of record to Plaintiff Oracle

3   America, Inc. ("Oracle"). I have personal knowledge of the matters set forth herein and, if called

4   to testify, could and would testify competently to the following.

5   1.   On April 11, 2012, I sent an email to counsel for Google proposing the following

6   stipulated statement to the jury:

7   The names of the various items appearing in the disputed API package
     specifications, such as names of API files, packages, classes, and methods, are not
8   protected.

9   The selection or arrangement of the names of the various items in the API package
     specifications may still be protected by copyright if those names are numerous
10   enough and their selection and arrangement original enough that their combination
     constitutes an original work. The Court will instruct the jury on this issue
11   following the close of evidence.

12   A true and correct copy of the above-referenced correspondence is attached as Exhibit 1.

13   2.   On April 11, 2012, counsel for Google responded and declined Oracle's request.

14   *See* Exhibit 1. That evening, I met and conferred with counsel for Google, but we were unable to

15   come to an agreement regarding the stipulated statement, or the timing of the delivery of the

16   Court's deemed statement regarding the uncopyrightability of names.

17

18   I declare under penalty of perjury under the laws of the United States that the foregoing is

19   true and correct. Executed on April 12, 2012, in San Francisco, California.

20
                                    /s/ *Marc David Peters*
21   Marc David Peters

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PETERS DECL. ISO ORACLE MOTION RE STATEMENT TO JURY
CASE NO. CV 10-03561 WHA   1
sf-3132202

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ATTESTATION

2

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this

3

Declaration of Marc Peters. In compliance with General Order 45, X.B., I hereby attest that Marc

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Peters has concurred in this filing.

5

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Date: April 12, 2012   /s/ Michael A. Jacobs

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EXHIBIT 1

From:	Matthias Kamber <MKamber@kvn.com>
Sent:	Wednesday, April 11, 2012 5:49 PM
To:	Peters, Marc D.; dalvik-KS (dalvik-KS@KSLAW.com); DALVIK-KVN; 'GT_Google@gtlaw.com' (GT_Google@gtlaw.com) (GT_Google@gtlaw.com)
Cc:	Oracle-Google (Oracle-Google@BSFLLP.com); Oracle-ProjectX
Subject:	RE: Oracle v. Google - proposed admissions

Dear Marc,

As to the below request, Google does not agree to appending the language you propose to the statement. Unlike the statements that the Court deemed admitted, Oracle's statement is more akin to a jury instruction. We see no reason for appending this language in light of the fact that the Court will separately provide both preliminary and final instructions on the relevant issues.

Regards,

Matthias

From: Peters, Marc D. [mailto:MDPeters@mofo.com]
Sent: Wednesday, April 11, 2012 1:58 PM
To: dalvik-KS (dalvik-KS@KSLAW.com); DALVIK-KVN; 'GT_Google@gtlaw.com' (GT_Google@gtlaw.com) (GT_Google@gtlaw.com)
Cc: Oracle-Google (Oracle-Google@BSFLLP.com); Oracle-ProjectX
Subject: RE: Oracle v. Google - proposed admissions

Dear counsel,

We thought that the following rephrasing may be clearer and more acceptable:

Directly following the statement "The names of the various items appearing in the disputed API package specifications, such as names of API files, packages, classes, and methods, are not protected," the jury shall be told the following: "The selection or arrangement of the names of the various items in the API package specifications may still be protected by copyright if those names are numerous enough and their selection and arrangement original enough that their combination constitutes an original work. The Court will instruct the jury on this issue following the close of evidence."

This language is drawn from the Court's order at page 8 of ECF No. 433.

Best regards,
Marc

From: Peters, Marc D.
Sent: Wednesday, April 11, 2012 11:38 AM
To: dalvik-KS (dalvik-KS@KSLAW.com); DALVIK-KVN (DALVIK-KVN@kvn.com); 'GT_Google@gtlaw.com'
(GT_Google@gtlaw.com) (GT_Google@gtlaw.com)

Cc: Oracle-Google (Oracle-Google@BSFLLP.com); Oracle-ProjectX
Subject: RE: Oracle v. Google - proposed admissions

Dear counsel,

In light of the Court's order of this morning (Dkt. 896), would Google agree that directly following the statement "The names of the various items appearing in the disputed API package specifications, such as names of API files, packages, classes, and methods, are not protected," the jury shall be told the following: "The selection, arrangement, and structure of items in the API package specifications may be protected. The Court will instruct the jury on this issue following the close of evidence." This language corresponds to the Court's language in the 9/15/11 MSJ Order: "This order finds that the names of the various items appearing in the disputed API package specifications are not protected by copyright. This order makes no finding as to whether any other elements of the API package specifications (or their selection or arrangement) are protected or infringed." (ECF No. 433 at 13.) Please let me know by 3pm.

Best regards,
Marc

_____

From: Peters, Marc D.
Sent: Tuesday, April 10, 2012 11:37 PM
To: dalvik-KS (dalvik-KS@KSLAW.com); DALVIK-KVN (DALVIK-KVN@kvn.com); 'GT_Google@gtlaw.com' (GT_Google@gtlaw.com) (GT_Google@gtlaw.com)
Cc: Oracle-Google (Oracle-Google@BSFLLP.com); Oracle-ProjectX
Subject: Oracle v. Google - proposed admissions

Dear counsel,

Please let me know by 3pm Wednesday if Google will stipulate to one or more of the admissions identified in the attached proposed order. The factual and legal support for these admissions is found in the attached draft motion.

Best regards,
Marc

Marc David Peters, Ph.D.
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
650-813-5932 tel
650-251-3834 direct fax
650-494-0792 fax
mdpeters@mofo.com

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